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November 27, 2000

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

IN RE: *Universal Service for Rural Areas --- The Generic Docket*
Docket No. 00-00523

Dear David:

Please accept for filing the original and thirteen copies of the Rebuttal Testimony of William J. Barta filed on behalf of the Southeastern Competitive Carriers Association in the above-captioned proceeding. Copies have been forwarded to parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Henry Walker

By:

Henry Walker *HW*

HW/nl
Attachment

POSTED

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

NOV 27 11 46
SECRETARY

IN RE:)
GENERIC DOCKET ADDRESSING) **Docket No. 00-00523**
RURAL UNIVERSAL SERVICE)

**REBUTTAL TESTIMONY
OF
WILLIAM J. BARTA**

**ON BEHALF OF THE
SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION
HENDERSON RIDGE CONSULTING, INC.
CUMMING, GEORGIA
NOVEMBER 27, 2000**

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**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE
REBUTTAL TESTIMONY OF
WILLIAM J. BARTA
NOVEMBER 27, 2000
DOCKET NO. 00-00523**

Q. Please state your name and business address.

A. My name is William Barta and my business address is 7170 Meadow Brook Court, Cumming, Georgia, 30040.

Q. Have you previously submitted testimony in this proceeding?

A. Yes. I submitted prefiled testimony on November 14, 2000 in this proceeding.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of the Southeastern Competitive Carriers Association ("SECCA").

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to respond to the premature conclusion reached by Mr. Steven Watkins, the witness on behalf of the Rural Telephone Coalition ("the Coalition"). In his prefiled testimony, Mr. Watkins concludes that the rural incumbent local exchange carriers operating in Tennessee have an immediate need for universal service support. My testimony discusses the faulty premise on which the perceived need for support is based and the anti-competitive manner in which the Coalition proposes to administer the rural universal service program.

1 **Q. Please summarize your testimony.**

2
3 A. In this proceeding, the Tennessee Regulatory Authority (“the Authority” or “the
4 TRA”) is addressing the matter of whether or not the rural incumbent local
5 exchange carriers (“rural ILECs”) have a need for universal service support. The
6 basic principles that should guide the TRA in establishing and administering a
7 Universal Service Fund include: (1) the carrier’s responsibility to demonstrate a
8 bona fide need for an explicit support amount through a fully documented,
9 forward-looking economic cost study (or comprehensive cost of service and
10 earnings analysis in the event the rural ILEC cannot develop a forward-looking
11 economic cost study) and (2) to ensure that the Universal Service Fund is
12 administered in a competitively neutral manner that does not place undue burdens
13 upon contributors to the fund or require unreasonable standards be satisfied in
14 order for alternative providers to be eligible for universal service support out of
15 the fund.

16
17 The rural universal service program, as proposed by the Rural Telephone
18 Coalition and endorsed by Mr. Watkins, violates these basic principles of fairness.
19 First, under the proposed plan, a rural ILEC is never required to demonstrate any
20 need for universal service support. In lieu of demonstrating a bona fide need for
21 universal service support through adequate cost documentation, the Coalition’s
22 Plan automatically provides funding based upon the higher amount of a rural
23 ILEC’s 1999 historical intrastate annual revenues or its then current intrastate
24 revenue requirement. The TRA and all the other carriers contributing to the fund
25 would never have the opportunity to assess or challenge whether such support is
26 actually needed to maintain universal service in the rural ILEC’s service area or is
27 simply sustaining the excess earnings of a rural carrier.

28
29 Second, the proposed plan requires that all classes of customers and services,
30 including advanced services, be supported through the Rural Universal Service

1 Fund. The requirement to subsidize all classes of customers and services of a
2 rural carrier places an additional and unnecessary burden upon other carriers
3 providing telecommunications services in Tennessee. Mr. Watkins believes that
4 the wireline networks of the rural carriers hold the greatest potential for the
5 delivery of advanced services. Instead of artificially supporting the technology
6 that the rural ILECs deem best suited for the delivery of advanced services
7 through a tax imposed upon other carriers; the TRA should allow the competitive
8 market to dictate the introduction and acceptance of new technologies and service
9 offerings.

10
11 The Coalition's Plan erects formidable obstacles to block competition from
12 emerging in the rural carriers' service areas. Under the proposed plan, a
13 competitive carrier must be designated as a carrier-of-last-resort in order to be
14 eligible for universal service support. As part of the carrier-of-last-resort
15 designation, the competitive provider must provide service ubiquitously to all
16 consumers throughout the service territory. Furthermore, the competitive carrier
17 must provide ubiquitous service without being able to request unbundled network
18 elements from the rural ILEC.

19
20 The expectation that a competing provider must undertake a complete build-out of
21 duplicative distribution, feeder, interoffice, and switching facilities in order to be
22 eligible for any universal service support does not approach any standard of
23 competitive neutrality or reasonableness. Such unreasonable conditions simply
24 shield the rural ILEC from competition into perpetuity while it continues to
25 receive a permanent subsidy that may or may not be necessary to maintain
26 universal service.

27
28 The Coalition's Plan should be rejected by the TRA in its entirety. The Authority
29 should first determine whether or not the rural ILECs have a real need for
30 universal service support at this time. Once a bona fide need for support is

1 exhibited, the Authority can then proceed to administering the fund in a
2 competitively neutral and equitable manner.

3
4 **Q. What is the most equitable approach to determine whether or not the rural**
5 **incumbent local exchange carriers have a need for universal service support?**
6

7 A. The rural incumbent local exchange carriers, like their non-rural counterparts,
8 should support any request for universal service funding based upon the estimate
9 of a fully documented, forward-looking, economic cost study. If a rural ILEC is
10 able to demonstrate that such a filing is not feasible, the Tennessee Regulatory
11 Authority should evaluate the individual carrier's need for universal service
12 support based upon a comprehensive current cost of service and earnings analysis.
13 The Authority should initiate the process to transition towards a requirement that
14 the universal service support needs of all incumbent carriers will be based upon a
15 forward-looking, economic cost study within three to five years.

16
17 **Q. What methodology does Mr. Watkins recommend be adopted in the current**
18 **assessment of whether or not the rural carriers' require universal service**
19 **support?**
20

21 A. Under the guise of being a "method to address revenue dislocations" (Testimony
22 of Mr. Watkins, page 18, line 18), Mr. Watkins simply endorses the Universal
23 Service Rate Redesign Plan that was submitted by the Rural Telephone Coalition
24 in its September 5, 2000 Comments in this proceeding. The Coalition's Plan does
25 not look towards forward-looking, economic costs, much less current costs and
26 earnings, in the determination of a rural carrier's need for universal service
27 support. As Mr. Watkins points out, "The Plan purposefully avoids evaluation of
28 cost models and other methodology" (page 18, line 21).
29

1 **Q. What are the primary shortcomings of the Coalition’s Plan with respect to**
2 **developing the rural carriers’ “need” for universal service support?**

3
4 **A. The most severe shortcoming -- and most startling element -- is that a rural ILEC**
5 **is never required to demonstrate any need for universal service support under the**
6 **Coalition’s Plan. In lieu of demonstrating a bona fide need for universal service**
7 **support with adequate cost documentation, the Coalition’s Plan automatically**
8 **provides funding based upon a rural ILEC’s “1999 historical intrastate annual**
9 **revenues” or, alternatively, its “then current intrastate revenue requirement”**
10 **(September 5, 2000 Comments, page 21).**

11
12 The funding approach outlined in the Coalition’s Plan, and as advocated by Mr.
13 Watkins, is inequitable and unreasonable to the TRA, other telecommunications
14 carriers, and all consumers of telecommunications services in Tennessee. For
15 instance, if the 1999 historical revenue levels have generated excess earnings,
16 then the universal service tax burden that will be assessed on all other
17 telecommunications providers operating in the State will simply be used to sustain
18 the excess earnings of the rural ILEC. Such a capricious method of determining
19 the need for universal service support certainly cannot be construed to be
20 consistent with the objectives of the federal and State legislation to promote
21 competition and maintain universal service.

22
23 **Q. What regulatory developments does Mr. Watkins reference as support for**
24 **his recommendation that the TRA adopt the Coalition’s funding approach?**

25
26 **A. Mr. Watkins refers to interstate access charge reform, modifications to the**
27 **jurisdictional separations process, the recommendations of the Rural Task Force**
28 **regarding universal service policy, and the reevaluation of the interconnection**
29 **agreements among carriers. In addition, Mr. Watkins discusses the possibility of**

1 a transitional intrastate access charge reduction and the termination of the
2 intraLATA toll settlement agreement between BellSouth and the rural ILECs.

3
4 **Q. What conclusions does Mr. Watkins reach regarding the federal and State**
5 **regulatory developments and the rural ILECs' need for universal service**
6 **support?**

7
8 A. Despite the uncertainty surrounding each of these regulatory issues, as well as the
9 complete lack of information regarding the rural carriers' cost structures and
10 earnings levels, Mr. Watkins is able to conclude that "The need for the
11 establishment of the new universal service mechanism is clear and immediate and
12 should not be contingent on an individual company's earnings" (page 21, line 36).
13 Mr. Watkins ultimately reaches the conclusion that "The implementation of the
14 State USF and rate redesign Plan for rural carriers as proposed by the Coalition
15 will result in public benefit, with no harm to any party, . . ." (page 23, line 1).

16
17 **Q. Do you have any comments on these conclusions of Mr. Watkins?**

18
19 A. Yes. The regulatory developments at the federal level referenced by Mr. Watkins
20 may or may not have a material impact upon an individual rural local exchange
21 carrier's revenues, expenses, and investment. It is not clear at all that these
22 ongoing proceedings have somehow manifested an immediate need to provide an
23 undocumented level of universal service support to Tennessee rural incumbent
24 local exchange carriers. Mr. Watkins simply asserts that there will be pressure on
25 the rural ILECs' ability to maintain affordable universal service as a result of
26 unresolved federal and State regulatory developments. However, there is no
27 reason for the TRA to adopt an arbitrary level of funding without fully
28 investigating whether there is any merit to the claim for that funding.

1 Furthermore, Mr. Watkins' conclusion that the Coalition's proposed funding
2 approach is in the public interest and will not harm any party is flawed. Perhaps
3 Mr. Watkins has overlooked the fact that any funding provided to the rural ILECs
4 will be assessed as a tax to other telecommunications providers in the State. A tax
5 to provide funding where none may be justified must surely be perceived as a
6 harm to these carriers. This conclusion is particularly curious in light of Mr.
7 Watkins' recommendations to severely restrict any competition in a rural ILEC's
8 service territory.

9
10 **Q. What recommendations of Mr. Watkins will deter the development of**
11 **competition?**

12
13 A. Mr. Watkins recommends that "Only those carriers that serve as carrier-of-last-
14 resort providers should receive support" (page 11, line 9) and "In the context of
15 the establishment of a State USF, a carrier should be required to provide service
16 ubiquitously to all as a prerequisite to be eligible to receive USF support (page 11,
17 line 16). Mr. Watkins continues to slam the door on competition by
18 recommending that the rural ILECs should be relieved from any requirement to
19 provide unbundled network elements (page 23, line 28).

20
21 Mr. Watkins' recommendations effectively foreclose the emergence of
22 competition in any rural ILEC's franchised service territory. The formidable
23 obstacles of requiring that a carrier must be designated as a carrier-of-last-resort,
24 have a ubiquitous network available, and cannot request unbundled network
25 elements from the incumbent monopoly provider will preclude competitive entry.
26 As Mr. Watkins is well aware, the ubiquitous networks of the rural ILECs have
27 been constructed with ratepayer funds and low interest federal loans over a period
28 of over fifty years. The expectation and requirement that a competing provider
29 must undertake a complete build-out of duplicative distribution, feeder,

1 interoffice, and switching facilities in order to be eligible for any universal service
2 support begs logic and reason.

3
4 Such unreasonable conditions ensure that the rural ILECs will enjoy their
5 monopoly status into perpetuity. Contrary to Mr. Watkins' and the Coalition's
6 desire to thwart competitive entry, the benefits of competition in the
7 telecommunications marketplace were intended to extend to all consumers –
8 including those in rural ILEC service areas.

9
10 **Q. Are there any other aspects of Mr. Watkins' recommendations regarding**
11 **rural universal service support that are anti-competitive?**

12
13 A. Yes. Mr. Watkins raises the flawed argument that the rural ILECs' costs to
14 provide advanced services should be included in the determination of universal
15 service support. He states that "High cost universal service support will
16 undoubtedly be essential in the promotion of broadband networks and advanced
17 services in rural areas. The wireline networks of the Coalition members hold the
18 greatest promise of broadband, advanced services delivery" (page 9, line 10).

19
20 The TRA has already identified the services to be supported through a universal
21 service fund and its definition did not include advanced services. A requirement
22 to subsidize all subscribers and services of a rural carrier, including advanced
23 services, places an additional and unnecessary burden on other carriers providing
24 services in Tennessee.

25
26 In addition, any universal service program should be competitively neutral and
27 not endorse the development of one technology over any other. Mr. Watkins'
28 belief that the wireline networks of the rural ILECs should be supported through a
29 universal service program because they "hold the greatest promise of broadband,
30 advanced services delivery" may not be shared by alternative providers. The

1 TRA should allow the competitive market to dictate the introduction and
2 acceptance of new technologies and service offerings.
3

4 **Q. Do you have any other comments concerning the testimony of Mr. Watkins?**

5
6 A. Yes. In his discussion of the interconnection requirements specified in the federal
7 act, Mr. Watkins refers to the “most onerous Section 251(c) interconnection
8 requirements” more than a dozen times in less than two and a half pages of
9 testimony. The extent of the rural exemption under the federal legislation is one
10 of the issues before the TRA. Consistent with the terms of the federal act, a bona
11 fide request from a competitive carrier should be granted if it is not unduly
12 economically burdensome, technically feasible, and consistent with the relevant
13 portions of Section 254 of the 1996 Act.
14

15 In repeatedly declaring the Section 251(c) requirements to be onerous, Mr.
16 Watkins should keep in mind the fact that the incumbent local exchange carrier
17 fully recovers the cost of provisioning interconnected services and unbundled
18 access including a reasonable share of its joint and common costs as well its cost
19 of capital.
20

21 **Q. Does this conclude your testimony?**

22
23 A. Yes.
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 27th day of November, 2000.

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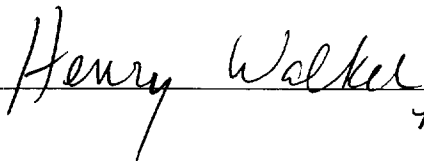
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